



The Appeals Board adopts the stipulations enumerated in the Award of the Special Administrative Law Judge dated February 4, 1994.

### **ISSUES**

Claimant alleged injury to his neck and back as a result of a series of accidents from December 5, 1988, through March 8, 1989. The Special Administrative Law Judge found claimant entitled to permanent partial disability benefits based upon a seven and one-half percent (7.5%) permanent impairment of function rating. Nature and extent of disability, if any, is the issue now before the Appeals Board.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the entire record, the Appeals Board finds, as follows:

The Award of the Special Administrative Law Judge should be modified to deny permanent partial general disability benefits as the evidence fails to prove that claimant has experienced permanent injury as a result of the alleged series of accidents from December 5, 1988, through March 8, 1989.

Ernest R. Schlachter, M.D., was the only physician to testify regarding the permanent effect of claimant's alleged injury to his neck and upper back. Although Dr. Schlachter's initial written report indicated that he felt claimant had experienced a seven and one-half percent (7.5%) permanent partial impairment of function to his body as a whole as a result of the alleged injury, Dr. Schlachter testified that he had changed his opinion as expressed in his report as a result of a subsequent examination. Dr. Schlachter's final opinion is that claimant did not experience permanent injury to his neck and upper back as a result of the alleged accidental injury. There is no medical evidence to contradict this opinion.

K.S.A. 44-501(a) states in part:

"In proceedings under the workers compensation act, the burden of proof shall be on the claimant to establish the claimant's right to an award of compensation and to prove the various conditions on which the claimant's right depends. In determining whether the claimant has satisfied this burden of proof, the trier of fact shall consider the whole record."

K.S.A. 44-508(g) states:

"'Burden of proof' means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record."

In order to obtain permanent partial general disability benefits, one must establish that he or she is disabled in a manner which is partial in character and permanent in quality and that the injury is not covered by the schedule in K.S.A. 44-510d. See K.S.A. 44-510e. As the evidence fails to establish that the alleged injury is permanent in nature, claimant is not entitled permanent partial general disability benefits herein.

### **AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award of Special Administrative Law Judge William F. Morrissey dated February 4, 1994, is modified and that claimant is denied permanent partial general disability benefits in this proceeding. The remaining orders of the Special Administrative Law Judge as set forth in his Award of February 4, 1994, are adopted by the Appeals Board and incorporated herein by reference as if fully set forth.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of July, 1994.

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BOARD MEMBER

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cc: Thomas E. Hammond, PO Box 47370, Wichita, Kansas 67201-7370  
Frederick L. Haag, 700 Fourth Financial Center, Wichita, Kansas 67202  
Andrew E. Busch, 1540 N Broadway, Suite 205, Wichita, Kansas 67214-1195  
William F. Morrissey, Special Administrative Law Judge  
George Gomez, Director